UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City and County of New York, on the seventh day of February one thousand nine hundred and ninety-five.

Present: Honorable Thomas J. Meskill,
Honorable Joseph M. McLaughlin,
Honorable Dennis G. Jacobs,
Circuit Judges.

HAROLD WARSHAY and DORIS WARSHAY,
Petitioners-Appellants,

- v -

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee.

No. 94-4037

Appeal from the United States Tax Court (Laro, Tax Court Judge).

This cause came on to be heard on the transcript of record from the Tax Court and was argued.

ON CONSIDERATION WHEREOF, it is hereby ordered, adjudged, and decreed that the decision of the Tax Court be and it hereby is AFFIRMED.

Petitioners Harold and Doris Warshay appeal from a decision of the Tax Court, entered December 8, 1993, finding them liable for a tax deficiency of $116,094, plus additions, based on certain improper deductions claimed in tax years 1979 through 1982. The Warshays do not dispute the deficiency. Instead, they argue that the Tax Court should have found that they were not liable at all because, in exchange for their cooperation in an IRS tax investigation, IRS officials had orally promised Harold Warshay that he would be immune from liability for these deductions.

The IRS denied that any such deal was struck. The Tax Court heard conflicting testimony concerning the existence of the alleged oral conferral of immunity, and determined that the IRS had not made any such promise. We find no clear error in the Tax Court's factual finding, and thus affirm. See Hoffenberg v. Commissioner, 905 F.2d 665, 666 (2d Cir. 1990).

Accordingly, the judgment of the Tax Court is AFFIRMED.

/s/ Hon. Thomas J. Meskill,

/s/ Hon. Joseh M. McLaughlin,

/s/ Hon. Dennis G. Jacobs,

Circuit Judges.

N.B THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND SHOULD NOT BE CITED OR OTHERWISE RELIED UPON IN THE UNRELATED CASES BEFORE THIS OR ANY OTHER COURT